IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:- 28.11.2006

Dalip Singh ...Petitioner

Versus

Smt.Rajbala ...Respondent

CORUM: HON'BLE MR.JUSTICE RANJIT SINGH

Present:- Mr.N.S.Shekhawat, Advocate for the petitioner.

Mr.Kapil Aggarwal, Advocate for the respondent.

RANJIT SINGH, J.

This revision is directed against the order passed by Sessions Judge, Narnaul, who while setting aside the order of JMIC Narnaul has allowed the application filed by the divorced wife Smt. Rajbala under Section 125 Cr.PC and granted maintenance to her at the rate of Rs.1200/- per month.

The facts in brief are that Smt. Rajbala filed a petition under Section 125 Cr.PC praying for grant of maintenance of Rs.2000/- per month as she had no source of income. It was stated by her that the petitioner-husband was having an income of Rs.10,000/- per month and was not maintaining her. Petitioner-husband filed written statement taking a stand that respondent-wife had intentionally left the petitioner and was staying with some other person and, accordingly, was not entitled to any maintenance. JMIC Narnaul dismissed the application filed by respondent-wife. The said order was impugned before Sessions Judge, Narnaul, who

vide his order dated 25.4.2006, set aside the order of JMIC Narnaul and granted maintenance of Rs.1200/- per month to respondent-wife from the date of application i.e. 31.5.2000. The same has been impugned in this revision petition. The petitioner has mainly challenged the order on the ground that the respondent wife Rajbala is living in adultery and as such in view of the provisions of Section 125 (4) Cr.P.C. is not entitled to any maintenance as she is stated to be having an illicit relation with one Ishar Singh.

It is admitted case of the parties that petitioner and respondent are divorced. The parties led evidence before the Court in support of their respective pleas. Respondent Rajbala had examined herself as a witness supporting the averments made by her in her application. During her cross-examination, she admitted that she had four children from the husband. She conceded that their daughter was married by petitioner Dalip Singh. She admitted that she knew one Ishwar Singh for the last 10/15 years, who belonged to village Nalapur. While disclosing the ground on which she had got divorced, respondent Rajbala brought out that her husband used to maltreat and beat her under the influence of liquor and forcing her to seek divorce. Applicant wife produced Ishwar Singh (PW1) as a witness in support of her claim. PW1 corroborated the version of Rajbala to the effect that petitioner used to beat her under the influence of liquor and thereafter had turned her out of matrimonial home. Suggestion put to PW1 that he was having good relations with Rajbala and was keeping her as wife was denied. Petitioner, on the other hand, appeared himself in support of his stand and rebutted the entire version brought on record by respondent Rajbala. Besides he also examined Subhash Chaudhary as RW1, his son Sanjay as

RW2 and Ramanand as RW4. RW2 Sanjay, son of the petitioner, and wife applicant has deposed that after taking divorce, his mother Rajbala was residing with Ishwar. Not only this, he stated that Ishwar Singh was his friend and used to visit him and thereafter his mother developed illicit relations with Ishwar and left home. As per this witness, his mother after obtaining divorce from his father has been living with Ishwar. JMIC Narnaul having regard to the evidence and mainly relying upon the testimony of Sanjay RW2, who is son of the parties, found that Rajbala respondent was leading an immoral life and held that she was not entitled to maintenance as she had been divorced by her husband due to wrong committed by her. Sessions Judge, Narnaul, however, found that the judgment and decree of the court dissolving the marriage between the parties had not been produced and accordingly there was no cogent and acceptable evidence to reach a conclusion that the wife was in the wrong while taking divorce from the husband. The court further found that in the absence of this decree, the evidence of petitioner Dalip Singh and his son Sanjay was not enough to dub the wife Rajbala to be a fault in seeking divorce. In this background, the judgment relied upon by the petitioner namely Bbagwan Raoji Dale Vs. Sushma alias Nanda Bhagwan Dale 2001 (1) RCR 340 (Bombay) could not be relied upon. While rejecting the contention raised on behalf of the petitioner that she was living in adultery and hence not entitled to maintenance in view of the provisions of Section 125 (4) Cr.PC, the Court held that this provision would not be applicable in case of a divorced wife.

Learned counsel appearing for the petitioner has by referring to the provisions of Section 125 (4) Cr.PC has urged that respondent would

not be entitled to maintenance in this case as she is living in adultery. During the course of argument, counsel candidly stated that petitioner is ready and willing to maintain respondent in case she is prepared to leave the person with whom she is having adulterous relations. Counsel for respondent, on the other hand, has submitted that Section 125 (4) Cr.PC has no applicability in the case of divorced wife and as such respondent Rajbala has been rightly granted maintenance in this case. Number of judgments have been cited by counsels, in support of their respective submissions. The counsel for petitioner has referred to Puliyulla Chalil Narayana Kurup Versus Thayyulla Parambath Valsala 2005 (4) R.C.R.(Criminal) 565; Pola Venkateshwarlu Versus Pola Lakshmi Devi and others 2005 (1) R.C.R. (Criminal) 1004; Chander Kumar Sharma Vs. Samriti Sharma 1998 (3) R.C.R (Criminal) 135 and Ammasi Vs. Smt.Amaravathi 1997 (4) R.C.R. (Criminal) 301. In Pulivulla Chalil Narayana Kurup's case (supra), Kerala High Court held that if after grant of maintenance, husband could establish that wife is living in adultery or that she has refused to live with him without sufficient reason then the Magistrate could cancel the order of maintenance. This was not a case where the wife had been divorced. There does not appear to be any doubt that provisions of Section 125 (4) Cr.PC would clearly apply to a case of wife, who is either living in adultery or without any sufficient reason, has refused to live with her husband or in a case where they are living separately by mutual consent. The question in the present case requiring adjudication is whether the provisions of Section 125 (4) Cr.PC would apply to a case of a divorced wife living in adultery etc. or not. In this regard, counsel for petitioner seems to be heavily relying upon the case of Pola Venkateshwarlu (supra). This was a case where wife had

been divorced on the ground that she was living in adultery. Under this circumstance, it was held that since the divorce had been granted on the ground of wife living in adultery, wife would not be entitled to receive any maintenance allowance. This factual position is not available on record in this case. It is not clear from the record if the adultery was the ground of divorce in the instant case. This judgment may not strictly be alluded to the facts of the present case. It was then that learned counsel referred to Chander Kumar Sharma's case (supra) to say that divorced wife living in adultery would not be entitled to a maintenance. This was a case where Judicial Magistrate had granted maintenance to a wife which had been challenged in revision. During the pendency of the revision before this Court and having regard to the different view expressed, two questions were referred for opinion to the larger Bench namely:-

> "(1) Whether the findings recorded by a Civil Court in exercise of its matrimonial jurisdiction, except the one dealing with the legal character or the marital status of the parties to the same, are relevant and admissible for the adjudication of the claim of the wife u/s 125 Cr.P.C.?
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> (2)Whether the defences specified in sub-section (4) of Section 125, Cr.P.C. are available to the husband in a petition filed under this section by the divorcee wife ?"

As noticed in this judgment while answering second question, Division Bench held :

> "Thus the first defence against the divorced wife that she is living in adultery, would be open to the husband, and not the other two defences available, under sub-section (4) of Section

125 of the Code of Criminal Procedure."

On the basis of this judgment, counsel for petitioner would contend that the impugned judgment passed by Sessions Judge, Narnaul cannot be sustained as this defence was available to the petitioner even if the wife was divorced if she was living in adultery. Detailed reference to the case of Ammasi (supra) may not be needed as in this case wife was living in adultery and admittedly provisions of Section 125 (4) Cr.PC were attracted in the said case. Counsel for petitioner has also placed reliance upon the case of Angoori Vs. Phool Kumar 2003 (3) R.C.R. (Criminal) 524. This was a case where the wife had left the matrimonial home and lived with her paramour in a rented house. On the basis of a statement given by the landlord and the daughter of the parties to marriage that wife was leading an immoral life, the maintenance was refused. Angoori's case (supra) has been referred to by the Sessions Judge, Narnaul and distinguished on the ground that the case of a wife whose marriage had been dissolved would be on different footing than the one who is living in adultery during the course of subsisting marriage, which had not been dissolved by a decree of divorce. This case as such also would not be attracted to the facts of the present case.

Counsel for respondent has drawn my attention to the cases of Gopi Vs. Smt.Krishna 2001 (4) RCR 624 (P&H) and Valsaraian Vs. Saraswathy 2003 (3) RCR 665 to urge that if a woman is living in adultery after divorce she cannot be held disentitled to maintenance under Section 125 (4) Cr.PC. In the case of Gopi Chand (supra), this Court had held that wife had already been divorced and as such she could not be refused maintenance on the ground that she is living in adultery. Similarly in

Valsaraaian's case (supra), Kerala High Court held that wife living in adultery is not entitled to maintenance but she is entitled to maintenance after divorce. While so holding, the Kerala High Court noticed that the application in the case before the Court was filed by the divorced wife. It was observed that a divorced wife can never live in adultery. In this regard a reference was made to Supreme Court judgment in the case of Vanamala v. Ranganatha Bhatta 1995 (2) KLJ 397. This was a case where petition for maintenance filed by divorced wife was resisted by invoking the provisions of Section 125 (4) Cr.PC on the ground that the divorce was by mutual consent and therefore the divorced woman was not entitled to get maintenance. Hon'ble Supreme Court held that on a plain reading of S.125 (4) it is clear that the expression wife in the sub-section does not have the extended meaning of including a woman who has been divorced. According to the Supreme Court, unless there is a relationship of husband and wife, there can be no question of a divorced woman living in adultery or without sufficient reason refusing to live with her husband. It was accordingly held that Sub-section (4) of Section 125 Cr.PC does not apply to the case of a woman who has been divorced or who has obtained a decree of divorce. In fact Hon'ble Supreme Court in the case of Rohtash Singh v. Smt.Ramendri & Ors. JT 2000 (2) SC 553 has gone into applicability of sub -section (4) of Section 125 Cr.PC in detail and the issues seem to be fully settled. It would be of advantage to refer to the observations of the Hon'ble Supreme Court, which are as under:-

> "Under this provision, a wife is not entitled to any Maintenance allowance from her husband if she is living in adultery or if she has refused to live with her husband without any sufficient

> reason or if they are living separately by mutual consent. Thus, all the circumstances contemplated by Sub-section (4) of Section 125 Cr.PC presuppose the existence of matrimonial relations. The provision would be applicable where the marriage between the parties subsists and not where it has come to an end. Taking the three circumstances individually, it will be noticed that the first circumstance on account of which a wife is not entitled to claim Maintenance Allowance from her husband is that she is living in adultery. Now, adultery is the sexual intercourse of two persons, either of whom is married to a third person. This clearly supposes the subsistence of marriage between the husband and wife and if during the subsistence of marriage, the wife lives in adultery, she cannot claim Maintenance Allowance under Section 125 of the Code of Criminal Procedure."

In this case Supreme Court also held that even though marital relation may have come to an end by a decree of divorce still the lady continued to be a wife within the meaning of Section 125 Cr.PC on account of Explanation (b) to Sub -section 1. While dealing with the submission made before Supreme Court that after grant of divorce between the parties mutual rights, duties and obligations should also come to an end, Hon'ble Supreme Court held:

> "This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125 (4). In another

> capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her."

In view of above quoted legal position, there cannot be any doubt that the plea of divorced wife living in adultery would not be available to her husband under the provisions of Section 125 (4) Cr.PC. The view taken by this Court in Chander Kumar Sharma's case (supra) that this defence would be open to a husband may not now be available in view of law laid down by the Hon'ble Supreme Court in Rohtash Singh's case (supra) as brought out. Since the matter has been resolved by Supreme Court, the plea raised on behalf of the petitioner regarding a divorced wife living in adultery to challenge the impugned order cannot be sustained. There is, thus, no infirmity in the impugned order. The present revision is, accordingly, dismissed.

(Ranjit Singh)
Judge

November 28,2006
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